A.F.R.

HIGH COURT OF CHHATTISGARH AT BILASPUR

Single Bench : Hon'ble Shri Dilip Raosaheb Deshmukh, J.

Civil Revision No.103 of 2007

Applicant/Defendant		Cent Bank through Branch Manager, Surya Bhawan, Near Laxmi Talkies, Juna Bilaspur, Bilaspur (C.G.)
	versus	
Non-Applicants	1.	Laxmandas, S/o Shri Gyandas Manikpuri, aged about 50 years, R/o MIG-II/54 M.P. Nagar, Korba, Distt. Korba
	2.	Aawaashin Grih Nirman Samiti through its President, Ameri Road, Tah. Takhatput, Distt. Bilaspur
	3.	Ayub Rabart Brown, S/o W.J. Brown, Vice President Aawaashin Grih Nirman Samiti, R/o Mangla, Bilaspur
	4.	Surendra Nikhil, S/o Shri Sher Singh Nikhil, R/o Manghwapara, Jarhabhata, Bilaspur
	5.	State of Chhattisgarh, through Collector, Bilaspur

Revision Petition under Section 115 of the Code of Civil Procedure, 1908

Present : Shri Anand Shukla, counsel for the applicant.

ORDER

(Passed on 3rd September, 2007)

The applicant is aggrieved by an order dated 12-06-2007 passed by Additional District Judge, Bilaspur in Civil Suit No.8-A/2007, whereby the application under Order 7 Rule 11 of the Code of Civil Procedure (henceforth 'the Code') filed by the applicant/defendant was dismissed on the ground that the defendant should file written statement raising all

such objections. No order on merit was passed on the application under Order 7 Rule 11 of the Code.

(2) In ***Saleem Bhai and others*** **vs.** ***State of Maharashtra and others*****, AIR 2003 SC 759**, the Apex Court has held as under:

> "**9.** A perusal of O. VII, R. 11, C.P.C. makes it clear that the relevant facts which need to be looked into for deciding an application thereunder are the averments in the plaint. The trial Court can exercise the power under O. VII, R. 11, C.P.C. at any stage of the suit before registering the plaint or after issuing summons to the defendant at any time before the conclusion of the trial. For the purposes of deciding an application under Cls. (a) and (d) of R. 11 of O. VII, C.P.C., the averments in the plaint are germane; the pleas taken by the defendant in the written statement would be wholly irrelevant at that stage, therefore, a direction to file the written statement without deciding the application under O.7 R. 11, C.P.C. cannot but be procedural irregularity touching the exercise of jurisdiction by the trial Court. The order, therefore, suffers from non-exercising of the jurisdiction vested in the Court as well as procedural irregularity. The High Court, however, did not advert to these aspects."
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> "**10.** We are, therefore, of the view that for the aforementioned reasons, the common order under challenge is liable to be set aside and we, accordingly, do so. We remit the cases to the trial Court for deciding the application under O. 7 R. 11, C.P.C. on the basis of the averments in

the plaint, after affording an opportunity of being heard to the parties in accordance with law."

(3) In ***Sopan Sukhdeo Sable and others*** **vs.** ***Assistant Charity Commissioner and others*****, (2004) 3 SCC 137**, the Apex Court has observed as under:

> "Order 7 Rule 11 lays down an independent remedy made available to the defendant to challenge the maintainability of the suit itself, irrespective of his right to contest the same on merits. The law ostensibly does not contemplate at any stage when the objections can be raised – the trial Court can exercise the power at any stage of the suit, that is, before registering the plaint or after issuing summons to the defendant at any time before the conclusion of the trial – and also does not say in express terms about the filing of a written statement: for the purposes of deciding an application under clauses (a) and (d) of Order 7 Rule 11 CPC, the averments in the plaint are germane: the pleas taken by the defendant in the written statement would be wholly irrelevant at that stage. Instead, the word "shall" is used, clearly implying thereby that Order 7 Rule 11 casts a duty on the court to perform its obligations in rejecting the plaint when the same is hit by any of the infirmities provided in the four clauses of Order 7 Rule 11, <u>even without intervention of the defendant</u> (emphasis supplied by me). In any event, rejection of the plaint under Order 7 Rule 11 does not preclude the plaintiffs from presenting a fresh plaint in terms of Order 7 Rule 13."

(4) In ***Sajjan Sikaria and others* vs. *Shakuntala Devi Mishra and others***, **(2005) 13 SCC 687**, the Apex Court has in a similar situation observed as under:

> "**3.** We find that the directions for considering the question relating to Order 7 Rule 11 CPC as preliminary issue is not correct as that would necessitate filing of a written statement. It is a settled position in law that while dealing with an application under Order 7 Rule 11 CPC, consideration of written statement is not a condition precedent and only averments in the plaint have to be considered. ....."

(5) In this view of the matter, the impugned order, whereby the application under Order 7 Rule 11 of the Code filed by the applicant/defendant was rejected on the above ground, is *per se* contrary to law. This civil revision is, therefore, being disposed of at the stage of admission without notice to the non-applicants. The impugned order dated 12-06-2007, whereby the application under Order 7 Rule 11 of the Code was dismissed, is set aside. The learned Additional District Judge shall decide the application under Order 7 Rule 11 of the Code on merit.

Sd/-
Dilip Raosaheb Deshmukh
Judge

Gopal